

ex 18

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN

| | | |
|-----------------------------|---|------------------------------|
| UNITED STATES OF AMERICA, |) | |
| |) | |
| Plaintiff, |) | |
| |) | |
| v. |) | |
| |) | |
| WALNUTDALE FARMS, INC., a |) | |
| Michigan Corporation: RALPH |) | |
| LETTINGA; KEVIN LETTINGA, |) | |
| |) | |
| Defendants. |) | |
| |) | Civil Action No. 4:00-CV-193 |
| SIERRA CLUB, |) | |
| |) | HON. DAVID W. McKEAGUE |
| Plaintiff, |) | |
| |) | |
| v. |) | |
| |) | |
| WALNUTDALE FARMS, INC., a |) | |
| Michigan Corporation: RALPH |) | |
| LETTINGA; KEVIN LETTINGA, |) | |
| |) | |
| Defendants. |) | |

CONSENT DECREE

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WHEREAS, Plaintiff United States of America, on behalf of the United States Environmental Protection Agency ("EPA"), and Plaintiff Sierra Club ("Sierra Club") have filed complaints in this consolidated action on October 1, 2002 and November 30, 2000 respectively, alleging that Defendants Walnuthdale Farms, Inc., Ralph Lettinga and Kevin Lettinga (collectively "Defendants") violated the Clean Water Act ("Act"), 33 U.S.C. § 1251 et seq.

WHEREAS, the United States and Sierra Club allege in their complaints, pursuant to Section 301 of the Act, 33 U.S.C. § 1311(a), that the Defendants unlawfully discharged pollutants from their facility at 4309 14th Street, Wayland Michigan ("Dairy Facility") into the waters of the United States without obtaining a National Pollutant Discharge Elimination System ("NPDES") permit.

WHEREAS, the United States' complaint further alleges that the Defendants failed to apply for an NPDES permit in violation of 40 C.F.R. § 122.21(a), and that the Defendants unlawfully failed to comply with an Administrative Order issued to them by EPA pursuant to Section 309(a) of the Clean Water Act.

WHEREAS, the Sierra Club's complaint further alleges that the Defendants failed to obtain an NPDES permit in violation of 40 C.F.R. § 122.23, that the Defendants failed to provide a water quality certification to the EPA prior to obtaining an NPDES permit in violation of Section 401 of the Act, 33 U.S.C. § 1341,

and that the Defendants have polluted, impaired and destroyed water, other natural resources, and the public trust therein, in violation of the Michigan Environmental Protection Act and Part 31 of the Natural Resources and Environment Protection Act, Mich. Comp. Laws §§ 324.1702(1) and 324.3101 et seq.

WHEREAS, on March 28, 2001, the Court entered an Order for Entry of Default against Defendants for failing to answer Sierra Club's Complaint or otherwise respond as permitted by the Federal Rules of Civil Procedure.

WHEREAS, on February 1, 2002, the Court entered a Joint Stipulation and Order to Conditionally Relieve Defendants from Entry of Default.

WHEREAS, nothing in this Consent Decree is intended to modify, or relieve Defendants from, any obligations under the Joint Stipulation and Order.

WHEREAS, the Defendants do not admit any liability to the United States or Sierra Club arising out of the transactions or occurrences alleged in the complaints.

WHEREAS, the Defendants do admit that Sierra Club is prevailing party in this litigation for the purposes of Section 505(d) of the Act, 33 U.S.C. § 1365(d).

WHEREAS, the Defendants agree that their obligations under this Decree are joint and several.

WHEREAS, the Defendants have provided the United States and Sierra Club with financial information indicating that the Defendants' ability to pay a civil penalty is limited.

WHEREAS, the Parties recognize, and the Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith and will avoid litigation between the Parties, and that this Consent Decree is fair, reasonable, and in the public interest.

NOW, THEREFORE, with the consent of the Parties, IT IS HEREBY ADJUDGED, ORDERED, AND DECREED as follows:

I. JURISDICTION AND VENUE

1. This Court has jurisdiction over the subject matter of this action, pursuant to 28 U.S.C. §§ 1331, 1345, and 1355, and Sections 309(b) and 505(a) of the Act, 33 U.S.C. §§ 1319(b) and 1365(a), and over the Parties. Venue lies in this District pursuant to Section 309(b) and 505(a) of the Act, 33 U.S.C. §§ 1319(b) and 1365(a), and 28 U.S.C. §§ 1391 (b) and (c) and 1395(a), because it is the judicial district in which the Defendants are located and in which the alleged violations occurred.

2. For purposes of this Decree, or any action to enforce this Decree, Defendants consent to the Court's jurisdiction over this Decree or such action and over Defendants, and consent to venue in this judicial district.

3. For purposes of this Decree, Defendants agree that the Complaints state claims upon which relief may be granted pursuant to the statutory sections set forth in the Complaints.

II. APPLICABILITY

4. The obligations of this Consent Decree apply to and are binding upon the United States and Sierra Club, and upon Defendants and any successor or other entities or persons otherwise bound by law.

5. Any transfer of ownership or operation of Walnutdale Farms to any other person must be conditioned upon the transferee's agreement to undertake the obligations required by this Decree, as provided in a written agreement between the Defendants and the proposed transferee, enforceable by the United States and Sierra Club as the third-party beneficiaries of such agreement. At least 30 days prior to such transfer, Defendants shall provide a copy of this Consent Decree to the proposed transferee and shall simultaneously provide written notice of the prospective transfer, together with a copy of the proposed written agreement, to EPA, the United States Department of Justice and Sierra Club, in accordance with Section XIII of this Decree (Notices). Any attempt to transfer ownership or operation of the Walnutdale Farms without complying with this Paragraph constitutes a violation of this Decree. No transfer of ownership or operation of the dairy facility, whether in compliance with

this Paragraph or otherwise, shall relieve Defendants of their obligation to ensure that the terms of the Decree are implemented.

6. Defendants shall provide a copy of this Consent Decree to all officers, employees, and agents whose duties might reasonably include compliance with any provision of this Decree, as well as to any contractor retained to perform work required under this Consent Decree. Defendants shall condition any such contract upon performance of the work in conformity with the terms of this Consent Decree.

7. In any action to enforce this Consent Decree, Defendants shall not raise as a defense the failure by any of its officers, directors, employees, agents, or contractors to take any actions necessary to comply with the provisions of this Consent Decree.

III. DEFINITIONS

8. Terms used in this Consent Decree that are defined in the Act or in regulations promulgated pursuant to the Act (including, but not limited to, the general definitions for concentrated animal feeding operations at 40 C.F.R. § 412.2) shall have the meanings assigned to them in the Act or such regulations, unless otherwise provided in this Decree. Whenever the terms set forth below are used in this Consent Decree, the following definitions shall apply:

a. "Complaints" shall mean the complaints filed by the United States and Sierra Club in this consolidated action;

b. "Comprehensive Nutrient Management Plan" shall mean a plan that meets the requirements of a "Nutrient Management Plan" as described at 40 C.F.R. § 412.4(c)(1) and a "Comprehensive Nutrient Management Plan" as described in the State of Michigan's National Pollutant Discharge Elimination System (NPDES) General Permit No. MIG440000.

c. "Consent Decree" or "Decree" shall mean this Decree and all appendices attached hereto (listed in Section XXII);

d. "Day" shall mean a calendar day unless expressly stated to be a working day. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next working day;

e. "Dairy Facility" shall mean (i) the Production Area of the facility owned by Defendants at 4309 14th Street, Wayland, Michigan, and (ii) all property owned, leased or used by Defendants for the purpose of land applying waste generated by the facility at this address;

f. "Defendants" shall mean the defendants in the Complaints - namely, Walnuthdale Farms, Inc., Ralph Lettinga, and

Kevin Lettinga. Defendants shall be jointly and severally liable for all obligations imposed upon Defendants under this Decree;

g. "EPA" shall mean the United States Environmental Protection Agency and any successor departments or agencies of the United States;

h. "Interest" shall mean interest compounded annually at the post-judgment rate provided by 28 U.S.C. § 1961(a), (b). The applicable rate is published by the Federal Reserve for one-year Treasury securities of constant maturity, published on Mondays for the week ending the prior Friday;

i. "Milk Coolers" shall mean any device used for cooling and storing milk;

j. "Natural Resources Conservation Service Technical Guidelines" shall mean Michigan-specific guidelines issued by the Michigan Natural Resource Conservation Service ("NRCS");

k. "Subparagraph" shall mean a portion of this Decree identified by an arabic numeral;

l. "Parties" shall mean the United States, Sierra Club, and Defendants;

m. "Process Wastewater" shall have the same meaning as defined in 40 C.F.R. § 412.2(d), including any storm water or runoff which comes into contact with any raw materials,

products, or byproducts, including (but not limited to) manure, litter, silage, leachate, milk, bedding or dead animals;

n. "Production Area" shall have the same meaning as defined in 40 C.F.R. 412.2(h) and shall include the storage pond that, under the terms of this Decree, the Defendants are required to design and build for the purpose of capturing Process Wastewater;

o. "Satellite facilities" shall mean (i) the Production Areas of the facilities owned and operated by Defendants at the following addresses in Wayland, Michigan: 4230 14th Street; 1284 144th Street; 4487 14th Street; and 4427 14th Street, and (ii) all property owned, leased or used by Defendants for the purpose of land applying waste generated by the facilities at these addresses;

p. "Section" shall mean a portion of this Decree identified by a roman numeral;

q. "State" shall mean the State of Michigan.

r. "United States" shall mean the United States of America, acting on behalf of EPA;

s. "Walnutdale Farms" or "Walnutdale Farms, Inc." shall mean the Dairy Facility and Satellite Facilities owned and operated by Defendants;

t. "Waste" shall mean any byproduct generated by dairy operations or animal feeding operations, including (but not

limited to) manure, Process Wastewater, non-saleable milk, feed and silage that is not used for feeding cattle, silage leachate, manure leachate, used bedding, or dead animals;

u. "Waste Storage Device" shall mean any structure used for containing Waste prior to disposal, including (but not limited to) manure pits, manure lagoon, slurry store, and the storage pond that, under the terms of this Decree, the Defendants are required to design and build for the purpose of capturing Process Wastewater;

v. "Waterers" shall mean any storage unit used for the purpose of providing drinking water to animals, and

w. "Waters of the United States" shall have the same meaning as defined by 40 C.F.R. § 122.2 and shall include Red Run Drain and the unnamed intermittent stream ("Lettinga Drain"), which originates to the south of the Dairy Facility, flows under the Dairy Facility through a conduit, and empties into Red Run Drain.

IV. CIVIL PENALTY

9. Subject to Paragraph 11 below, Defendants shall pay the sum of \$50,000 as a civil penalty, plus an additional sum for Interest on the \$50,000 accruing from August 13, 2003 - the date that the Parties jointly notified the Court of their agreement in principle to resolve outstanding claims. Payment of this amount shall be as follows: Within 90 days after the entry of this

Decree by the Court, the Defendants shall pay \$5,000 as their first installment payment, plus an additional sum for Interest on the \$50,000 calculated from August 13, 2003 through the date that the Court enters the Decree. Within 365 days after the entry of this Decree, the Defendants shall pay \$7,500 as their second installment payment, plus an additional sum for Interest on the remaining principal balance (\$45,000) calculated from the date of entry of the Decree through the date of payment of the second installment payment. Thereafter, the Defendants shall pay three additional installments of \$12,500 (plus an additional sum for Interest on the remaining principal balance at the time of each installment payment) with each installment being paid no later than 365 days from the date of the previous installment. Payment shall be made by certified check payable to "U.S. Department of Justice" in accordance with instructions to be provided to Defendant following lodging of the Consent Decree by the Financial Litigation Unit of the U.S. Attorney's Office for the Western District of Michigan. At the time of each payment, Defendants shall simultaneously send written notice of payment and a copy of any transmittal documentation (which should reference DOJ case number 90-5-1-1-07515 and the civil action number of this case) to the United States and Sierra Club in accordance with Section XIII of this Decree (Notices).

10. Defendants shall not deduct the civil penalty paid under this Section in calculating their federal income tax.

11. Defendants certify that they have made available to the United States and Sierra Club all relevant financial information and documentation regarding their financial status, and that this financial information accurately reflects their financial status as of the date of lodging of this Decree. Based upon this information and documentation, which are listed in Appendix A, the United States and Sierra Club have agreed that the Defendants do not have the ability to pay the civil penalty of \$370,000 demanded by the United States and Sierra Club for the purpose of settling this consolidated action. Defendants have agreed to provide additional financial information in accordance with Paragraph 12 below. If such information (or any other information obtained by the United States or Sierra Club after lodging of this Decree) reveals that, at the time of lodging of the Decree, the Defendants had the ability to pay a civil penalty that is greater than the amount set forth in Paragraph 9, the United States and Sierra Club may seek an increase in the penalty amount pursuant to the following procedure:

a. In the event that the United States and Sierra Club elect to seek an increase in the penalty amount under this Paragraph, the United States and Sierra Club will submit a written "Notice of Upward Adjustment of Penalty" to the

Defendants. Such notice shall state clearly the amount of the upward adjustment sought by the Plaintiffs and the basis for the increase. The Parties shall then enter into informal negotiations for a period that shall not exceed 20 days from the date of the notice, unless the period is modified by written agreement.

b. If the Parties agree upon the adjustment of the penalty amount, the Parties shall jointly submit to the Court a motion to modify the penalty amount Paragraph 9 of the Consent Decree.

c. If the Parties cannot agree upon an adjustment of the penalty amount, the United States and Sierra Club may seek judicial resolution of the dispute by filing with the Court and serving on the Defendants, in accordance with Section XIII of this Consent Decree (Notices), a motion requesting an increase of the penalty amount in Paragraph 9.

d. The Defendants shall respond to the Plaintiffs' motion within the time period allowed by the Local Rules of this Court. The Plaintiffs may file a reply memorandum, to the extent permitted by the Local Rules.

e. If the Court finds that the Defendants had an ability to pay a civil penalty in excess of the amount set forth in paragraph 9 at the time of lodging of the Decree, the Court shall increase the penalty to an amount commensurate with the Defendants' ability to pay at the time of entry of the decree.

The adjusted penalty shall not exceed \$370,000, which was the initial settlement amount demanded by the Plaintiffs.

f. The invocation of procedures under this Paragraph shall not, by itself, extend, postpone, or affect in any way any obligation of Defendants under this Consent Decree.

12. Disclosure of Financial Information: If the Defendants revise or amend any of the financial documents listed in Appendix A at any time prior to the termination of this Decree, the Defendants must provide the revision or amendment to the United States and Sierra Club within 60 days. Further, in the future, the Defendants shall provide each of the following documents to the United States and Sierra Club no later than 60 days after each such document has been completed: (i) Financial Statement of Walnutdale Farms as December 31, 2003, (ii) Federal Corporate Income Tax Form and attached schedules for Walnutdale Farms for 2003, (iii) Federal Individual Income Tax Form and attached schedules for Ralph Lettinga for 2003, and (iv) Federal Individual Income Tax Form and attached schedules for Kevin Lettinga for 2003. If the Defendants at any time revise or amend any of these documents, the Defendants must provide the revision or amendment to the United States and Sierra Club within 60 days.

V. COMPLIANCE REQUIREMENTS

13. Defendants shall comply with Section 301(a) of the Act by not discharging Waste and other pollutants into the Waters of

the United States except in accordance with the NPDES General Permit No. MIG440000 for concentrated animal feeding operations issued by the Michigan Department of Environmental Quality ("MDEQ") and the Certificate of Coverage No. MIG440001 issued by MDEQ to Walnutdale Farms on August 27, 2003. Defendant shall also comply with any and all modifications or renewals of the NPDES General Permit No. MIG440000 or the Certificate of Coverage No. MIG440001 that are made prior to the termination of this Decree.

14. Within 60 days of entry by the Court of the Consent Decree, or such other time as the Parties agree to in writing, Defendants shall submit to EPA for approval the following plans, as well as provide copies of such plans to Sierra Club and MDEQ:

a. Design Plans: Defendants shall submit design plans for capturing and storing all Process Wastewater generated by the Production Area of the Dairy Facility, including the runoff and direct precipitation from a 25-year/24-hour rainfall event. Such design plans shall, at a minimum, include the design for a storage pond with the following specifications:

- Minimum Pond Volume = 582,500 cu. ft.
- Minimum Dimensions at base = 40,000 sq. ft
- Minimum Dimensions at top = 64,525 sq. ft
- Minimum slope of sidewalls = 3:1
- Minimum Total depth = 7.5 ft

- Maximum Depth below ground surface = 2.5 ft
- Minimum Height above ground surface = 5 ft

In addition to the design plans required above in this Subparagraph, Defendants may also submit to EPA for approval design plans for an alternative storage pond, with a smaller capacity, if (concurrent with the foregoing design plan submittals) Defendants also:

i. submit design plans for additional measures to reduce the volume of Process Wastewater generated by the Production Area by diverting runoff away from the Production Area and thereby preventing the runoff from coming into contact with raw materials, products, byproducts or Waste within the Production Area;

ii. demonstrate the volume of Process Wastewater that will be generated by the Production Areas during a 25-year/24-hour rainfall event following implementation of the proposed additional runoff diversion measures, and

iii. show that the volume of any alternative storage pond proposed by Defendants is consistent with the size and design requirements set forth in EPA guidance, "Cost Methodology for the Final Revisions to the National Pollutant Discharge Elimination System Regulation and the Effluent Guidelines for Concentrated Animal Feeding Operations," (EPA-821-

R-03-004), which is available on the internet at
<http://cfpub.epa.gov/npdes/afo/cafodocs.cfm>.

b. Plans Relating to Construction: Defendants shall submit plans for storm water/sedimentation control and erosion prevention during the construction of the proposed measures set forth in the design plans submitted in accordance with the Subparagraph above.

15. Upon receipt of the plans submitted under Paragraph 14, EPA, in consultation with MDEQ and Sierra Club, shall review the plans (including any proposed alternative design plan) for the purpose of determining compliance with the Act and its implementing regulations. This review shall be conducted in accordance the procedures set forth in Paragraphs 32 to 35.

16. Within 120 days of receiving approval from EPA of plans submitted in accordance with Paragraph 14, or such other time as the Parties agree to in writing, Defendants shall complete construction of the storage pond and all other measures set forth in the approved plans. Prior to initiating construction, Defendants must (i) obtain a soil erosion and sedimentation control ("SESC") permit from the Allegan County Drain Commission and (ii) must file a signed notice of coverage in accordance with "Michigan's Permit-By-Rule for Construction Activities," R323.2190. Further, if construction will disturb 5 acres or more, Defendants cannot begin construction until they also apply for

and obtain coverage under Michigan's general permit for control of storm water associated with industrial activity. During construction, Defendants must comply with their SESC permit, with "Michigan's Permit-By-Rule for Construction Activities," R.323.2190, with Defendants' approved plan for storm water/sedimentation control and erosion prevention (submitted by Defendants under Paragraph 14 above), and (if applicable) with Michigan's general permit for control of storm water associated with industrial activity.

17. Within 90 days of entry by the Court of the Consent Decree, or such other time as the Parties agree to in writing, Defendants shall install electric heated Waterers and eliminate all discharges from cooling water from Milk Coolers.

18. Within 180 days of entry by the Court of the Consent Decree, or such other time as the Parties agree to in writing, the Defendants shall submit for approval to EPA and MDEQ a Comprehensive Nutrient Management Plan (CNMP) for the management and utilization of all Wastes from the Dairy Facility. At the same time that Defendants submit the CNMP to EPA and MDEQ, the Defendants shall submit a copy to Sierra Club.

19. Within 90 days of the entry by the Court of the Consent Decree, or such other time as the Parties agree to in writing, the Defendants shall submit for approval to EPA and MDEQ a CNMP for the management and utilization of all Wastes produced at the

Satellite Facilities. At the same time that Defendants submit the CNMP to EPA and MDEQ, the Defendants shall submit a copy to Sierra Club.

20. The CNMPs submitted in accordance with Paragraphs 18 and 19 shall be consistent (i) with the requirements, as of the date of each submittal, that are set forth in the State's NPDES General Permit for concentrated animal feeding operations, and (ii) with applicable Natural Resources Conservation Service ("NRCS") Technical Guidelines as of the date of each submittal, including Nutrient Management - 590 and Waste Utilization - 633.

21. The CNMPs submitted in accordance with Paragraphs 18 and 19 shall be updated and submitted in accordance with the State's NPDES General Permit No. MIG440000. In the event that the NPDES General Permit No. MIG440000 is modified or revised during the effective period of this Consent Decree, the CNMPs submitted in accordance with Paragraphs 18 and 19 shall be updated and submitted in accordance with the general permit as revised or modified.

22. Within 30 days of the entry by the Court of the Consent Decree, or such other time as the Parties agree to in writing, the Defendants shall install markers (i.e., measuring devices that reflect the remaining unused capacity of the storage device) on all existing Waste Storage Devices at the Dairy Facility. Thereafter, the Defendants shall install markers on all future

Waste Storage Devices, and shall at all times maintain a minimum of 1 foot of freeboard in all Waste Storage Devices.

23. If at any time the amount of freeboard in a Waste Storage Device at the Dairy Facility is less than twelve (12) inches, the Defendants shall promptly take all necessary steps to restore the twelve inches of freeboard within 3 days. The Defendants shall also notify MDEQ, Sierra Club and EPA in accordance with Paragraph 42 below.

24. The Defendants shall conduct weekly inspections at the Dairy Facility to insure compliance with the Decree. Waste Storage Devices shall be inspected for freeboard, overflows, broken pipes or equipment failure and any leaks, seeps, erosion or damage caused by burrowing animals. All piping, transfer lines and catch basins shall also be inspected weekly and maintained as necessary. Routine maintenance, including mowing of berms, shall be conducted in a manner to facilitate these inspections.

25. The Defendants shall maintain such records at the Dairy Facility as necessary to demonstrate compliance with the CNMP and the Consent Decree for a term of five years, including the following:

- a. Inspection and maintenance reports for all Waste Storage Devices.

- b. Records of all fields upon which manure, Process Wastewater, and other Wastes are land applied. Such records shall state the type of Waste, the dates of application, field identification reference, size of fields involved in such applications, rates of application, amounts of Waste applied, and weather and soil moisture conditions during application.
- c. Copies of the hour-by-hour forecast as presented by the Weather Channel (www.weather.com) or equivalent prior to land application.

26. The Defendants shall post and ensure that all employees at the Dairy Facility are fully aware of the proper procedures to effectively respond to any spill, or discharge to the Waters of the United States from the Dairy Facility. The posted procedures shall contain detailed instructions to include, but not be limited to, names of officials at Walnutdale Farms to be notified, State and Federal agencies to be notified, local or downstream public water supply and public health entities to be notified, appropriate phone numbers, addresses, safety precautions, and immediate actions to abate the occurrence.

27. All Waste produced by Walnutdale Farms shall be disposed of in the manner set forth in the approved CNMPs after the CNMPs have been reviewed and determined to be consistent with: (1) the NPDES permit requirements, (2) applicable Natural

Resources Conservation Service (NRCS) Technical Guides including Nutrient Management - 590, Waste Utilization - 633 and Waste Storage Facility - 313, and (3) other applicable guidance published after entry of the Consent Decree.

28. Land application of manure, Process Wastewater, and other Wastes shall not be undertaken when soil is saturated, when it is raining, or when the hour-by-hour forecast predicts a greater than 50% probability of a rain event of $\frac{1}{2}$ inch or more within 24 hours prior to or following the land application. Land application, including application on frozen or snow-covered ground, shall not be performed except in accordance with approved CNMPs and the State's NPDES General Permit No. MIG440000. In the event that the State's NPDES General Permit No. MIG440000 is modified or revised during the effective date of this Consent Decree, land application, including application on frozen or snow-covered ground, shall not be performed except in accordance with the general permit as revised or modified.

29. Defendants shall develop and implement a schedule and procedure for dewatering Waste Storage Devices at the Dairy Facility. A date log indicating weekly inspections of the wastewater level in any Waste Storage Device shall be maintained and shall be signed by the person performing the inspection.

30. A maintenance log shall be maintained separately or as part of the approved CNMP and signed by one or more of the

Defendants documenting that preventive maintenance has been accomplished.

31. If for any reason, there is a discharge of manure, Process Wastewater, or other Wastes to the Waters of the United States, the Defendants shall visually monitor the discharge and notify EPA, Sierra Club and MDEQ immediately, via telephone. The Defendants shall take all necessary steps to stop the discharge within 3 days. Further, the Defendants shall submit a report to EPA, Sierra Club and MDEQ in accordance with Paragraph 41 below. Compliance with this paragraph shall not be deemed to resolve any liability for any discharges in violation of the Act, its implementing regulations, the Defendant's NPDES permit, or this Consent Decree.

32. Approval of Deliverables by EPA. After review of any plans submitted to EPA for approval under this Section, EPA shall in writing: (a) approve the submission; (b) approve the submission upon specified conditions; (c) approve part of the submission and disapprove the remainder; or (d) disapprove the submission.

33. If the submission is approved, the Defendants shall take all actions required by the plan(s) as approved. If the submission is conditionally approved or approved only in part, Defendants shall, upon written direction of EPA, take all actions required by the approved plan(s) that EPA determines are

technically severable from any disapproved portions, subject to Defendants' right to dispute only the specified conditions or the disapproved portions, under Section IX of this Decree (Dispute Resolution).

34. If the submission is disapproved in whole or in part by EPA, Defendants shall, within 45 days, or such other time as the Parties agree to in writing, correct all deficiencies and resubmit the plan(s), or disapproved portion(s) thereof, for approval. Any Stipulated Penalties applicable to the original submission, as provided in Section VII of this Decree, shall accrue during the 45-day period or other specified period, but shall not be payable unless the resubmission is untimely or is disapproved in whole or in part; provided that, if the original submission was so deficient as to constitute a material breach of Defendants' obligations under this Decree, the Stipulated Penalties applicable to the original submission shall be due and payable notwithstanding any subsequent resubmission.

35. If a resubmitted plan, report, or other item, or portion thereof, is disapproved in whole or in part, EPA may again require Defendants to correct any deficiencies, in accordance with the preceding Paragraphs, subject to Defendants' right to invoke Dispute Resolution and the right of EPA to seek Stipulated Penalties as provided in the preceding Paragraphs.

36. Approval of Deliverables by MDEQ or other governmental entity. Where any compliance obligation under this Section requires Defendants to obtain a permit or approval from MDEQ or any other governmental entity, Defendants shall take all actions necessary to obtain all such permits or approvals. Defendants may seek relief under the provisions of Section IX (Force Majeure) of this Consent Decree for any delay in the performance of any such obligation resulting from a failure to obtain, or a delay in obtaining, any permit or approval required to fulfill such obligation, if Defendants have submitted timely and complete applications and have taken all other actions necessary to obtain all such permits or approvals.

VI. REPORTING REQUIREMENTS

37. Within 90 days of entry of this Consent, or such other time as the Parties agree to in writing, the Defendants shall submit to EPA the certified "as built" drawing of the manure storage lagoon constructed by the Defendants pursuant to the Joint Stipulation and Order to Conditionally Relieve Defendants from Entry of Default.

38. Within 60 days of the completion of construction of the storage pond and other measures proposed by Defendants pursuant to paragraph 14, the Defendants shall submit to EPA and Sierra Club the certified "as built" drawings of the storage pond and other measures devices constructed by Defendants.

39. Within 365 days after the entry of the Consent Decree by the Court, and within each calendar year thereafter until termination of this Consent Decree, the Defendants shall submit a report to EPA and Sierra Club that shall describe the status of the Defendants' compliance during the proceeding year with each of the requirements set forth in Section V (Compliance Requirements).

40. When submitting an updated CNMP to MDEQ in accordance with Paragraph 21, the Defendants must also submit a copy to EPA and certify that the update reflects all process changes, waste stream changes, changes in fields receiving waste, and changes in the number of cattle.

41. Whenever there is a discharge of pollutants to the waters of the United States, the Defendants shall document the following information and submit a report to EPA, Sierra Club and MDEQ within 10 days of becoming aware of the discharge:

- a. Description and cause of the discharge, including an estimate of the flow, discharge volume, and any analytical data;
- b. The period of discharge, including exact begin and end dates and times and, if ongoing, the anticipated time the discharge is expected to continue;
- c. All steps taken or to be taken to reduce, eliminate, and prevent the recurrence of the discharge;

- d. If the discharge was caused by a precipitation event, a description of the event using information from an onsite rain gauge or the closest official US Weather Service weather station, and
- e. If the cause of a violation cannot be fully explained at the time the report is due, Defendants shall include a statement to that effect in the report. Defendants shall investigate to determine the cause of the violation and then shall submit an amendment to the report, including a full explanation of the cause of the violation, within 30 days of the day Defendants become aware of the cause of the violation.

42. If Defendants violate any other requirements of this Consent Decree (e.g. failure to maintain 12 inches of freeboard, land application of manure on frozen ground, etc.), Defendants shall notify the United States and Sierra Club of such violation and the likely duration of the violation in writing within ten working days of the day Defendants first become aware of the violation. Any such notice shall include an explanation of the violation's likely cause and of the remedial steps taken, and/or to be taken, to prevent or minimize such violation. If the cause of a violation cannot be fully explained at the time the report is due, Defendants shall include a statement to that effect in the report. Defendants shall investigate to determine the cause

of the violation and then shall submit an amendment to the report, including a full explanation of the cause of the violation, within 30 days of the day Defendants become aware of the cause of the violation.

43. In the case of (1) an overflow of a Waste Storage Device, (2) a discharge of Waste to the Waters of the United States, or (3) any other event or violation of this Decree that may pose an immediate threat to the public health or welfare or the environment, Defendants shall notify EPA and Sierra Club orally or by electronic or facsimile transmission as soon as possible, but not later than 24 hours after Defendants first knew of, or should have known of, the violation or event. This procedure is in addition to the requirements set forth in the preceding Paragraph.

44. Nothing in this Section relieves Defendants of their obligation to provide the requisite notice for purposes of Section VIII (Force Majeure).

45. Each report submitted by Defendants under this Section shall be signed by an official of the submitting party and include the following certification:

I certify under penalty of law that I have examined and am familiar with the information submitted in this document and all attachments and that this document and its attachments were prepared either by me personally or under my direction or supervision in a manner designed to ensure that qualified and knowledgeable personnel properly gathered and

presented the information contained therein. I further certify, based on my personal knowledge or on my inquiry of those individuals immediately responsible for obtaining the information, that the information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing and willful submission of a materially false statement.

This certification requirement does not apply to emergency or similar notifications where compliance would be impractical.

46. The reporting requirements of this Consent Decree do not relieve Defendants of any reporting obligations required by the Act or implementing regulations, or by any other federal, state, or local law, regulation, permit, or other requirement.

47. Any information provided pursuant to this Consent Decree may be used by the United States in any proceeding to enforce the provisions of this Consent Decree and as otherwise permitted by law.

VII. STIPULATED PENALTIES

48. If Defendants fail to pay the civil penalty required to be paid under Section IV of this Decree (Civil Penalty) when due, Defendants shall pay a stipulated penalty of \$100 per day for each day that the payment is late. Late payment of the civil penalty shall be made in accordance with Paragraph 9 above. Stipulated Penalties shall be paid in accordance with Paragraph 55 below. All transmittal correspondence shall state that any

such payment is for late payment of the civil penalty due under this Decree, or for Stipulated Penalties for late payment, as applicable, and shall include the identifying information set forth in Paragraph 9 above.

49. Defendants shall be liable for Stipulated Penalties to the United States for violations of this Consent Decree as specified below, unless excused under Section VIII (Force Majeure). A violation includes failing to perform any obligation required by the terms of this Decree, including any plan or schedule approved under this Decree, according to all applicable requirements of this Decree and within the specified time schedules established by or approved under this Decree.

50. Violations of Requirements relating to the Process Wastewater Storage Pond and CNMPs:

a. The following Stipulated Penalties shall accrue per violation per day for each violation of the requirements identified in Subparagraph b:

| <u>Penalty Per Violation Per Day</u> | <u>Period of Noncompliance</u> |
|--------------------------------------|--------------------------------|
| \$100 | 1st through 14th day |
| \$200 | 15th through 30th day |
| \$300 | 31st day and beyond |

b. The Stipulated penalties listed in Subparagraph a shall apply if:

i. Defendants fail to submit design plans for capturing and storing process wastewater in accordance with the requirements set forth in Paragraph 14.

ii. Defendants fail to complete construction in accordance with the requirements set forth in Paragraph 16.

iii. Defendants fail to submit CNMP for Dairy Facility in accordance with Paragraphs 18 & 20;

iv. Defendants fail to submit CNMP for Satellite Facilities in accordance with Paragraphs 19 & 20, or

v. Defendants fail to update CNMP in accordance with Paragraph 21.

51. Violation of Land Application Requirements: The following Stipulated Penalties shall apply for each day that Defendants violate the requirements for the land application of Waste set forth in Paragraph 28:

| <u>Penalty Per Violation Per Day</u> | <u>Period of Noncompliance</u> |
|--------------------------------------|--------------------------------|
| \$500 | 1st through 14th day |
| \$750 | 15th through 30th day |
| \$1,000 | 31st day and beyond |

52. Violations of Other Compliance Measures: Defendants shall pay a stipulated penalty of \$100 per day for each violation of the requirements set forth below:

a. Defendants fail to prevent overflows from waterers and milk coolers in accordance with Paragraph 17;

b. Defendants fail to install markers or maintain freeboard in accordance with Paragraph 22;

c. Defendants fail to conduct compliance inspections and perform maintenance in accordance with Paragraph 24;

d. Defendants fail to maintain records in accordance with Paragraphs 25 and 30;

e. Defendants fail to comply with employee training and notification requirements set forth in Paragraph 26, or

f. Defendants fail to comply with requirement in Paragraph 29 for inspecting and dewatering Waste Storage Devices.

53. Violations of Reporting Requirements. The following Stipulated Penalties shall accrue per violation per day for each violation of the reporting requirements of Section VI of this Consent Decree:

Penalty Per Violation Per Day Period of Noncompliance

| | |
|--------|-----------------------|
| \$ 100 | 1st through 14th day |
| \$ 200 | 15th through 30th day |
| \$ 300 | 31st day and beyond |

54. The United States, or Sierra Club, or both may seek Stipulated Penalties under this Section. Either Plaintiff may waive Stipulated Penalties, or reduce the amount of Stipulated

Penalties sought, in the exercise of their unreviewable discretion, and in accordance with this Paragraph. Sierra Clubs' decision to waive Stipulated Penalties, or reduce the amount of Stipulated Penalties sought by Sierra Club, shall not prejudice or in any way modify the United States' right to seek Stipulated Penalties under this Section. The United States' decision to waive Stipulated Penalties, or reduce the amount of Stipulated Penalties, shall not prejudice or in any way modify Sierra Club's right to seek Stipulated Penalties under this Section.

55. Stipulated Penalties under this Section shall begin to accrue on the day after performance is due or on the day a violation occurs, whichever is applicable, and shall continue to accrue until performance is satisfactorily completed or until the violation ceases. Stipulated Penalties shall accrue simultaneously for separate violations of this Consent Decree. Defendants shall pay any Stipulated Penalty within 30 days of receiving the written demand from either the United States or Sierra Club, if not from both Plaintiffs jointly.

56. Stipulated Penalties shall continue to accrue as provided in Paragraph 55 above, during any Dispute Resolution, with interest on accrued penalties, but need not be paid until the following:

a. If the dispute is resolved by agreement or by a decision of the United States that is not appealed to the

Court, Defendants shall pay accrued penalties determined to be owing, together with Interest, to the United States within 30 days of the effective date of the agreement or the receipt of EPA's decision or order;

b. If the dispute is appealed to the Court and the Plaintiffs prevail in whole or in part, Defendants shall pay all accrued penalties determined by the Court to be owing, together with Interest, within 60 days of receiving the Court's decision or order, except as provided in Subparagraph c below;

c. If any Party appeals the District Court's decision, Defendants shall pay all accrued penalties determined to be owing, together with Interest, within 15 days of receiving the final appellate court decision.

57. Defendants shall pay Stipulated Penalties owing to the United States by certified or cashier's check in the amount due payable to the "U.S. Department of Justice," referencing DOJ No. 90-5-1-1-07515 and United States Attorney's Office file number [____], and delivered to the office of the United States Attorney, Western District of Michigan, P. O. Box 208, 330 Ionia, Suite 501, Grand Rapids, MI 49501-0208.

58. Defendants shall not deduct Stipulated Penalties paid under this Section in calculating their federal income tax.

59. If Defendants fail to pay Stipulated Penalties according to the terms of this Consent Decree, Defendants shall

be liable for Interest on such penalties accruing as of the date payment became due.

60. Subject to the provisions of Section XI of this Consent Decree (Effect of Settlement/Reservation of Rights), the Stipulated Penalties provided for in this Consent Decree shall be in addition to any other rights, remedies, or sanctions available to the United States for Defendants' violation of this Consent Decree or applicable law. Where a violation of this Consent Decree is also a violation of Section 301(a) of the Act, 33 U.S.C. § 1311(a) or of the effluent guidelines for concentrated animal feeding operations 40 C.F.R. Part 412, Subpart C, Defendants shall be allowed a credit, for any Stipulated Penalties paid, against any statutory penalties imposed for such violation.

VIII. FORCE MAJEURE

61. A "force majeure" is any event beyond the control of Defendants, their contractors, or any entity controlled by Defendants that delays the performance of any obligation under this Consent Decree despite Defendants' best efforts to fulfill the obligation. "Best efforts" includes anticipating any potential force majeure and addressing the effects of any such event (a) as it is occurring and (b) after it has occurred, to prevent or minimize any resulting delay to the greatest extent

possible. Force Majeure does not include Defendants' financial inability to perform any obligation under this Consent Decree.

62. Defendants shall provide notice to the United States and Sierra Club orally or by electronic or facsimile transmission as soon as possible, but not later than 72 hours after the time Defendants first knew of, or by the exercise of due diligence, should have known of, a claimed force majeure event. Defendants shall also provide written notice, as provided in Section XIII of this Consent Decree (Notices), within 7 days of the time Defendants first knew of, or by the exercise of due diligence, should have known of, the event. The notice shall state the anticipated duration of any delay; its cause(s); Defendants' past and proposed actions to prevent or minimize any delay; a schedule for carrying out those actions; and Defendants' rationale for attributing any delay to a force majeure event. Failure to provide oral and written notice as required by this Paragraph shall preclude Defendants from asserting any claim of force majeure.

63. If the United States, after consultation with Sierra Club, agrees that a force majeure event has occurred, the United States may agree to extend the time for Defendants to perform the affected requirements for the time necessary to complete those obligations. An extension of time to perform the obligations affected by a force majeure event shall not, by itself, extend

the time to perform any other obligation. Where the United States agrees to an extension of time, the appropriate modification shall be made pursuant to Section XVI of this Consent Decree (Modification).

64. If the United States, in consultation with Sierra Club, does not agree that a force majeure event has occurred, or does not agree to the extension of time sought by Defendants, the United States' position shall be binding, unless Defendants invoke Dispute Resolution under Section IX of this Consent Decree. In any such dispute, Defendants bear the burden of proving, by a preponderance of the evidence, that each claimed force majeure event is a force majeure event; that Defendants gave the notice required by Paragraph 62; that the force majeure event caused any delay Defendants claim was attributable to that event; that Defendants exercised best efforts to prevent or minimize any delay caused by the event, and that the extension of time proposed by Defendants is necessary to complete the requirement affected by the event.

IX. DISPUTE RESOLUTION

65. Unless otherwise expressly provided for in this Consent Decree, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising under or with respect to this Consent Decree. However, such procedures shall not apply to actions by the United States or Sierra Club to

enforce obligations of the Defendants that have not been disputed in accordance with this Section.

66. Informal Dispute Resolution. Any dispute subject to dispute resolution under this Consent Decree shall first be the subject of informal negotiations. The dispute shall be considered to have arisen when Defendants send the United States and Sierra Club a written Notice of Dispute. Such Notice of Dispute shall state clearly the matter in dispute. The period of informal negotiations shall not exceed 20 days from the date the notice is received, unless that period is modified by written agreement. If the Parties cannot resolve a dispute by informal negotiations, then the position advanced by the United States, in consultation with Sierra Club, shall be considered binding unless, within 10 days after the conclusion of the informal negotiation period, Defendants invoke formal dispute resolution procedures as set forth below.

67. Formal Dispute Resolution. Defendants shall invoke formal dispute resolution procedures, within the time period provided in the preceding Paragraph, by serving on the United States and Sierra Club a written Statement of Position regarding the matter in dispute. The Statement of Position shall include, but may not necessarily be limited to, any factual data,

analysis, or opinion supporting Defendants' position and any supporting documentation relied upon by Defendants.

68. The United States and Sierra Club shall serve their Statement of Position (individually or jointly), within 45 days of receipt of Defendants' Statement of Position. The Plaintiffs' Statement(s) of Position shall include, but may not necessarily be limited to, any factual data, analysis, or opinion supporting that position and all supporting documents relied upon by the party or parties submitting the Statement. The Statement of Position of the United States shall be binding on Defendants, unless Defendants file a motion for judicial review of the dispute in accordance with the following Paragraph.

69. Defendants may seek judicial review of the dispute by filing with the Court and serving on the United States and Sierra Club, in accordance with Section XIII of this Consent Decree (Notices), a motion requesting judicial resolution of the dispute. The motion must be filed within 10 days of receipt of the Plaintiffs' Statement(s) of Position pursuant to the preceding Paragraph. The motion shall contain a written statement of Defendants' position on the matter in dispute, including any supporting factual data, analysis, opinion, or documentation, and shall set forth the relief requested and any schedule within which the dispute must be resolved for orderly implementation of the Consent Decree.

70. The United States and Sierra Club shall respond to Defendants' motion within the time period allowed by the Local Rules of this Court. Defendants may file a reply memorandum, to the extent permitted by the Local Rules.

71. In any dispute under this Paragraph, Defendants shall bear the burden of demonstrating that their position clearly complies with this Consent Decree and the requirements of the Act and its implementing regulations and that Defendants are entitled to relief under applicable law. The United States reserves the right to argue that its position is reviewable only on the administrative record and must be upheld unless arbitrary and capricious or otherwise not in accordance with law.

72. The invocation of dispute resolution procedures under this Section shall not, by itself, extend, postpone, or affect in any way any obligation of Defendants under this Consent Decree, unless and until final resolution of the dispute so provides. Stipulated Penalties with respect to the disputed matter shall continue to accrue from the first day of noncompliance, but payment shall be stayed pending resolution of the dispute as provided in Paragraph 56 above. If Defendants do not prevail on the disputed issue, Stipulated Penalties shall be assessed and paid as provided in Section VII (Stipulated Penalties).

X. INFORMATION COLLECTION AND RETENTION

73. The United States, and its representatives, including attorneys, contractors, and consultants, shall have the right of entry to any facility covered by this Consent Decree, at all reasonable times, upon presentation of credentials to:

a. monitor the progress of activities required under this Consent Decree;

b. verify any data or information submitted to the United States or MDEQ in accordance with the terms of this Consent Decree;

c. obtain samples and, upon request, splits of any samples taken by Defendants or their representatives, contractors, or consultants;

d. obtain documentary evidence, including photographs and similar data; and

e. assess Defendants' compliance with this Consent Decree.

74. Upon request, Defendants shall provide EPA or Sierra Club (or the authorized representatives of EPA or Sierra Club) splits of any samples taken by Defendants. Upon request, EPA and Sierra Club shall provide Defendants splits of any samples taken by them.

75. Until five years after the termination of this Consent Decree, Defendants shall retain, and shall instruct their

contractors and agents to preserve, all non-identical copies of all records and documents (including records or documents in electronic form) in their or their contractors' or agents' possession or control, or that come into their or their contractors' or agents' possession or control, and that relate in any manner to Defendants' performance of their obligations under this Consent Decree. This record retention requirement shall apply regardless of any corporate or institutional document-retention policy to the contrary. At any time during this record-retention period, the United States may request copies of any documents or records required to be maintained under this Paragraph.

76. This Consent Decree in no way limits or affects any right of entry and inspection, or any right to obtain information, held by the United States pursuant to applicable federal or state laws, regulations, or permits, nor does it limit or affect any duty or obligation of Defendants to maintain records or information imposed by applicable federal or state laws, regulations, or permits.

XI . EFFECT OF SETTLEMENT/RESERVATION OF RIGHTS

77. This Consent Decree resolves the civil claims of the United States for the violations alleged in the United States' complaint filed in this consolidated action through the date of lodging of this Consent Decree.

78. This Consent Decree resolves the civil claims of the Sierra Club for the violations alleged in the Sierra Club's complaint filed in this consolidated action through the date of lodging of this Consent Decree.

79. This Consent Decree shall not be construed to prevent or limit the rights of the United States or Sierra Club to obtain penalties or injunctive relief under the Act or implementing regulations, or under other federal or state laws, regulations, or permit conditions, except as expressly specified herein.

80. Defendants are responsible for achieving and maintaining complete compliance with all applicable federal, State, and local laws, regulations, and permits; and Defendants' compliance with this Consent Decree shall be no defense to any action commenced pursuant to said laws, regulations, or permits. This Consent Decree is not a permit, or a modification of any permit, under any federal, State, or local laws or regulations. Neither the United States nor Sierra Club, by their consent to the entry of this Consent Decree, warrant or aver in any manner that Defendants' compliance with any aspect of this Consent Decree will result in compliance with provisions of the Act, 33 U.S.C. § 1251 et seq.

81. Application for construction grants, State Revolving Loan Funds, or any other grants or loans, or other delays caused by inadequate facility planning or plans and specifications on

the part of Defendant shall not be cause for extension of any required compliance date in this Consent Decree.

82. This Consent Decree does not limit or affect the rights of Defendants, the United States or Sierra Club against any third parties, not party to this Consent Decree. Nor does this Consent Decree limit the rights of third parties, not party to this Consent Decree, against Defendants, except as otherwise provided by law.

83. This Consent Decree shall not be construed to create rights in, or grant any cause of action to, any third party not party to this Consent Decree.

84. The United States and Sierra Club reserve all legal and equitable remedies available to enforce the provisions of this Consent Decree, except as expressly stated herein. The United States further reserves all legal and equitable remedies to address any imminent and substantial endangerment to the public health or welfare or the environment arising at, or posed by, Defendants' facilities, whether related to the violations addressed in this Consent Decree or otherwise.

XII. COSTS

85. The United States and Defendants shall bear their own costs of this action, including attorneys' fees, except that the United States shall be entitled to collect the costs (including attorneys fees) incurred in any action necessary (i) to collect

any portion of the civil penalty, (ii) to obtain an increase in the amount of the civil penalty pursuant to Paragraph 11, or (iii) to collect any Stipulated Penalties due but not paid by Defendants. Defendants shall reimburse Sierra Club for a portion of Sierra Club's costs of this action by paying to Sierra Club the sum of \$50,000, plus an additional sum for Interest on the \$50,000 accruing from August 13, 2003 - the date that the Parties jointly notified the Court of their agreement in principle to resolve outstanding claims. Payment of this amount shall be made in accordance with the Subparagraphs below in this Section. Sierra Club shall also be entitled to collect costs (including attorneys fees) incurred in any action necessary (i) to collect any portion of the civil penalty, (ii) to obtain an increase in the amount of the civil penalty pursuant to Paragraph 11, or (iii) to collect any Stipulated Penalties due but not paid by Defendants.

a. Within 90 days after the entry of this Decree by the Court, the Defendants shall pay \$5,000 as their first installment payment to Sierra Club, plus an additional sum for Interest on the \$50,000 calculated from August 13, 2003 through the date that the Court enters the Decree;

b. Within 365 days after the entry of this Decree, the Defendants shall pay \$7,500 as their second installment payment to Sierra Club, plus an additional sum for

Interest on the remaining principal balance (\$45,000) calculated from the date of entry of the Decree through the date of payment of the second installment payment;

c. Following payment of the second installment payment, the Defendants shall pay three additional installments of \$12,500 (plus an additional sum for Interest on the remaining principal balance at the time of each installment payment) with each installment being paid no later than 365 days from the date of the previous installment;

d. Payments to Sierra Club under this Paragraph shall be made by certified check payable to "Sierra Club Environmental Law Program" in accordance with instructions to be provided to Defendant by Sierra Club following lodging of the Consent Decree.

e. At the time of each payment, Defendants shall simultaneously send written notice of payment and a copy of any transmittal documentation (which should reference DOJ case number 90-5-1-1-07515 and the civil action number of this case) to the United States and Sierra Club in accordance with Section XIII of this Decree (Notices).

XIII. NOTICES

86. Unless otherwise specified herein, whenever notifications, submissions, or communications are required by

this Consent Decree, they shall be made in writing and addressed as follows:

To the United States:

Bruce Gelber
Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
Box 7611 Ben Franklin Station
Washington, D.C. 20044-7611
Re: DOJ No. 90-5-1-1-07515

To EPA:

Director, Water Division
Environmental Protection Agency, Region V
Water Enforcement Compliance Assurance Branch, (WC15-J),
77 West Jackson Boulevard
Chicago, Illinois 60604
Attention: Arnie Leder

To Sierra Club

Aaron Isherwood
Staff Attorney
Sierra Club Environmental Law Program
85 Second Street, 2d Floor
San Francisco, CA 94105-3441

To MDEQ

Barry Selden
Chief, Enforcement Unit
Michigan Department of Environmental Quality

Surface Water Quality Division
P.O. Box 30028
Lansing, Michigan 48909-7773

To Defendants:

David B. Carter, Jr.
325 South Clinton Street
Grand Ledge, Michigan 48837

87. Any Party may, by written notice to the other Parties, change its designated notice recipient or notice address provided above.

88. Notices submitted pursuant to this Section shall be deemed submitted upon mailing, unless otherwise provided in this Consent Decree or by mutual agreement of the Parties in writing.

XIV. EFFECTIVE DATE

89. The Effective Date of this Consent Decree shall be the date upon which this Consent Decree is entered by the Court.

XV. RETENTION OF JURISDICTION

90. The Court shall retain jurisdiction over this case until termination of this Consent Decree, for the purpose of resolving disputes arising under this Decree or entering orders modifying this Decree or effectuating or enforcing compliance with the terms of this Decree.

XVI. MODIFICATION

91. The terms of this Consent Decree may be modified only by a subsequent written agreement signed by all the Parties, or by order of the Court. Where the modification constitutes a material change to any term of this Decree, it shall be effective only upon approval by the Court.

XVII. TERMINATION

92. After Defendant has maintained continuous satisfactory compliance with Section 301(a) of the Act, 33 U.S.C. 1311(a), its

NPDES permit, and this Consent Decree for a period of five year after the Effective Date of this Consent Decree, and has paid the civil penalty and any accrued Stipulated Penalties as required by this Consent Decree, Defendants may serve upon the United States and Sierra Club a Request for Termination, stating that Defendants have satisfied those requirements, together with all necessary supporting documentation.

93. Following receipt by the United States and Sierra Club of Defendants' Request for Termination, the Parties shall confer informally concerning the Request and any disagreement that the Parties may have as to whether Defendants have satisfactorily complied with the requirements for termination of this Consent Decree. If the United States, after consultation with Sierra Club, agrees that the Decree may be terminated, the Parties shall submit, for the Court's approval, a joint stipulation terminating the Decree.

94. If the United States, after consultation with the Sierra Club, does not agree that the Decree may be terminated, Defendants may invoke Dispute Resolution under Section IX of this Decree. However, Defendants shall not seek Dispute Resolution of any dispute under Section IX until two months after service of its Request for Termination.

XVIII. PUBLIC PARTICIPATION

95. This Consent Decree shall be lodged with the Court for a period of not less than 30 days for public notice and comment in accordance with 28 C.F.R. § 50.7. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or considerations indicating that the Consent Decree is inappropriate, improper, or inadequate. Defendants consent to entry of this Consent Decree without further notice.

XIX. SIGNATORIES/SERVICE

96. Each undersigned representative of Defendant, Sierra Club and the Assistant Attorney General for the Environment and Natural Resources Division of the Department of Justice certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind the Party he or she represents to this document.

97. This Consent Decree may be signed in counterparts, and its validity shall not be challenged on that basis.

98. Defendants agree not to oppose entry of this Consent Decree by the Court or to challenge any provision of the Decree, unless the United States has notified Defendants in writing that it no longer supports entry of the Decree.

99. Defendants agree to accept service of process by mail with respect to all matters arising under or relating to this

Consent Decree and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable Local Rules of this Court including, but not limited to, service of a summons.

XX. INTEGRATION

100. This Consent Decree constitutes the final, complete, and exclusive agreement and understanding among the Parties with respect to the settlement embodied in the Decree and supersedes all prior agreements and understandings, whether oral or written, concerning the settlement embodied herein. No other document, nor any representation, inducement, agreement, understanding, or promise, constitutes any part of this Decree or the settlement it represents, nor shall it be used in construing the terms of this Decree.

XXI. FINAL JUDGMENT

101. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute a final judgment of the Court as to the United States, Sierra Club and Defendant.

XXII. APPENDICES

102. Appendix A, "List of Financial Documents Provided by Defendants" is incorporated into this Consent Decree.

Dated and entered this ____ day of _____, ____.

DAVID W. McKEAGUE
UNITED STATES DISTRICT JUDGE
WESTERN DISTRICT OF MICHIGAN

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. Walnutdale Farms, Inc., et al. Civil No. 4:01 CV 193

FOR PLAINTIFF
UNITED STATES OF AMERICA:

Date: _____

THOMAS L. SANSONETTI
Assistant Attorney General
Environment and Natural Resources
Division
United States Department of Justice

JOSEPH W.C. WARREN
Trial Attorney
Environmental Enforcement Section
Environment and Natural Resources
Division
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20544-7611

Date: _____

WALKER SMITH
Director,
Office of Regulatory Enforcement
U.S. Environmental Protection Agency
1200 Pennsylvania Ave., NW
Washington, D.C. 20460-0001

MARGARET M. CHIARA
United States Attorney
Western District of Michigan

Date: _____

CHARLES R. GROSS
Assistant United States Attorney
United States Attorney's Office
P.O. Box 208
Grand Rapids, Michigan 49501-0208

THE UNDERSIGNED PARTY enters into this Consent Decree in the
matter of United States v. Walnutdale Farms, Inc., et al. Civil
No. 4:01 CV 193

FOR PLAINTIFF SIERRA CLUB

Date: _____

THE UNDERSIGNED PARTY enters into this Consent Decree in the
matter of United States v. Walnutdale Farms, Inc., et al. Civil
No. 4:01 CV 193

FOR DEFENDANTS WALNUTDALE FARMS, INC.,
RALPH LETTINGA, AND KEVIN LETTINGA

Date: _____

DAVID B. CARTER, JR.
325 South Clinton Street
Grand Ledge, Michigan 48837

APPENDIX A

LIST OF FINANCIAL DOCUMENTS PROVIDED BY DEFENDANTS

1. Financial Statement of Corporate Debtor, Walnutdale Farms
2. Financial Statement of Debtor, Ralph Lettinga
3. Financial Statement of Debtor, Kevin Lettinga
4. Walnutdale Farms, List of Machinery and Equipment, 12/31/02
5. Walnutdale Farms, Compiled Financial Statements for the Years Ended December 31, 2002 and 2001
6. Walnutdale Farms, Compiled Financial Statements for the Years Ended December 31, 2001 and 2000
7. Walnutdale Farms, Compiled Financial Statements for the Years Ended December 31, 1999 and 1998
8. June & Ralph Lettinga, List of assets and liabilities
9. Amended U.S. Individual Income Tax Return for Ralph and June Lettinga for 2002
10. U.S. Individual Income Tax Return for Ralph and June Lettinga for 2001
11. U.S. Individual Income Tax Return for Ralph and June Lettinga for 2000
12. U.S. Individual Income Tax Return for Ralph and June Lettinga for 1999
13. Walnutdale Farms, Inventory of Personal Property
14. Amended U.S. Individual Income Tax Return for Kevin and Debra Lettinga for 2002
15. U.S. Individual Income Tax Return for Kevin and Debra Lettinga for 2001
16. U.S. Individual Income Tax Return for Kevin and Debra Lettinga for 2000

17. U.S. Individual Income Tax Return for Kevin and Debra Lettinga for 1999
18. U.S. Income Tax Return for Walnutdale Farms, Inc. for 2002
19. U.S. Income Tax Return for Walnutdale Farms, Inc. for 2001
20. U.S. Income Tax Return for Walnutdale Farms, Inc. for 2000
21. Explanation of distribution of proceeds by Walnutdale Farm & Ralph Lettinga from sale of farm land, May 24, 2000
22. Facsimile, dated September 19, 2003, of letter, dated September 17, 2003, from David B. Carter to Joseph Warren re list of Defendants' monthly expenses and expected capital expenditure.
23. List of Accounts Payable as of June 30, 2003 (compiled by Van Bruggen & Vande Vegte, P.C. and submitted to Dept. of Justice by facsimile on October 1, 2003)
24. List of Notes Payable/Long-Term Debt/Current Portion as of June 30, 2003 (compiled by Van Bruggen & Vande Vegte, P.C. and submitted to Dept. of Justice by facsimile on October 2, 2003)
25. Lease Workpaper as June 30, 2003 (compiled by Van Bruggen & Vande Vegte, P.C. and submitted to Dept. of Justice by facsimile on October 1, 2003)

All letters and payments
sent to

this Consent Decree, they shall be made in writing and addressed
as follows:

To the United States:

Bruce Gelber
Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
Box 7611 Ben Franklin Station
Washington, D.C. 20044-7611
Re: DOJ No. 90-5-1-1-07515

To EPA:

Director, Water Division
Environmental Protection Agency, Region V
Water Enforcement Compliance Assurance Branch, (WC15-J),
77 West Jackson Boulevard
Chicago, Illinois 60604
Attention: Arnie Leder

To Sierra Club

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